



**SUPREME COURT OF THE UNITED STATES**

**OCTOBER TERM, 1951**

**No. 184**

**THE STANDARD OIL COMPANY, AN OHIO CORPORATION,**  
*vs. Appellant,*

**JOHN W. PECK, TAX COMMISSIONER OF OHIO AND JOHN J.  
CARNEY, AUDITOR OF CUYAHOGA COUNTY, OHIO**

**APPEAL FROM THE SUPREME COURT OF THE STATE OF OHIO**

**STATEMENT OPPOSING JURISDICTION AND  
MOTION TO DISMISS OR AFFIRM**

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*Attorney General of Ohio;*  
**C. WILLIAM O'NEILL,**  
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**ROBERT H. LEACH,**  
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**FRANK T. CULLITAN,**  
*Prosecuting Attorney of Cuyahoga*  
*County, Ohio;*  
**SAUL DANACEAU,**  
*First Assistant Prosecuting*  
*Attorney of Cuyahoga County, Ohio,*  
*Counsel for Appellees.*

Statement opposing  
miss or affirm  
Statement of issue  
No substantial  
the appeal

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IN THE SUPREME COURT OF OHIO

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No. 32060

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THE STANDARD OIL COMPANY, AN OHIO CORPORATION,  
*Appellant,*  
vs.

JOHN W. PECK, TAX COMMISSIONER OF OHIO (SUBSTITUTED  
FOR C. EMORY GLANDER, FORMER TAX COMMISSIONER OF  
OHIO), AND JOHN J. CARNEY, AUDITOR OF CUYAHOGA  
COUNTY (SUBSTITUTED FOR JOHN A. ZANGERLE, FORMER  
AUDITOR OF CUYAHOGA COUNTY),

*Appellees,*

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**STATEMENT IN OPPOSITION TO APPELLANT'S  
STATEMENT IN SUPPORT OF JURISDICTION AND  
APPELLEES' MOTION TO DISMISS OR AFFIRM.**

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The appellees in the above entitled cause, for their statement in opposition to the statement in support of jurisdiction of the appellant, filed herein, and in support of the appellees' motion to dismiss the appeal or affirm the judgment of the Supreme Court of Ohio, respectfully state the following:

**I. Statement of Issue on Appeal**

The question sought to be presented in this appeal is the claim of the appellant, an Ohio corporation, that Ohio

statutes levying an *ad valorem* tax on boats and barges of the appellant used in interstate commerce are contrary to and in violation of the Due Process of Law clause of the Fourteenth Amendment of the Constitution of the United States. The appellees deny the claim of the appellant that the Due Process of Law clause of the Fourteenth Amendment of the Federal Constitution prevents Ohio from enforcing the personal property tax it has assessed and levied on all of the boats and barges owned by the appellant. The Supreme Court of Ohio, in the opinion and judgment here challenged by the appellant, determined the question so raised by the appellant adversely to it.

## II. No Substantial Federal Question Presented by the Appeal

This case presents the question of whether the State of Ohio can tax on an *ad valorem* basis, boats and barges, registered from an Ohio port and owned by an Ohio corporation, whose corporate domicile and principal place of business is in Ohio, which boats and barges are used in transporting, on the inland waterway of the Mississippi and Ohio Rivers, crude oil of the corporation from ports in Louisiana and Tennessee to ports in Kentucky and Indiana. The question has been answered in the affirmative by the Supreme Court of the United States, which repeatedly has declared the rule that the domicile of the owner of vessels plying between the ports of different states is the situs for the purpose of taxation where it does not appear that such vessels have an actual situs elsewhere.

*Hays v. The Pacific Mail Steamship Company*, 17 How., 596, 15 L. Ed., 254 (1855);

*City of St. Louis v. Wiggins Ferry Company*, 11 Wall., 423, 20 L. Ed., 192 (1871);



*Ayer & Lord Tie Company v. Commonwealth of Kentucky*, 202 U. S., 409, 421, 423, 50 L. Ed., 1082, 1087 (1906);

*Southern Pacific Company v. Commonwealth of Kentucky*, 222 U. S., 63, 68, 69, 74, 75, 56 L. Ed., 96, 98, 99, 100, 101 (1911).

The facts as set forth in the opinion of the Supreme Court of Ohio in this case, as well as in the Statement in Support of Jurisdiction, disclose that the boats and barges of the appellant were not used wholly and exclusively in a state other than Ohio. The record fails to disclose whether any of the boats or barges taxed were continuously throughout the year in another state. The record only shows that the boats and barges during the tax year were transiently within the limits of other states wherein cargoes were loaded or unloaded in ports located in such other states.

The fact that appellant, in the future, because of the decision in *Ott, etc., v. Mississippi Valley Barge Line Company, etc.*, 336 U. S., 169, 93 L. Ed., 585 (1949), may be required to pay personal property taxes in some other state upon some part of its boats and barges, does not presently deprive Ohio of its right to tax such property, particularly in the light of the case of *Northwest Airlines, Inc., v. Minnesota*, 322 U. S., 292, 295, 88 L. Ed., 1283, 1286 (1944), and what was said by Mr. Justice Frankfurter at page 295 (1286):

“ \* \* \* The fact that Northwest paid personal property taxes for the year 1939 upon ‘some proportion of its full value’ of its airplane fleet in some other States does not abridge the power of taxation of Minnesota as the home State of the fleet in the circumstances of the present case. *The taxability of any part of this fleet by any other State than Minnesota, in view*

of the taxability of the entire fleet by that State, is not now before us. It was not shown in the Miller case (202 U. S., 584) and it is not shown here that a defined part of the domiciliary corpus has acquired a permanent location, i. e., a taxing situs, elsewhere. \* \* \* (Emphasis and parenthetical matter ours.)

The doctrine of tax apportionment by a nondomiciliary state applied to vessels engaged in interstate commerce and not taxed by the domiciliary state upheld by the Supreme Court of the United States in *Ott, etc., v. Mississippi Valley Barge Line Company, etc.*, 336 U. S., 169, 93 L. Ed., 585 (1949), is not involved in this appeal. The fact that the principle of that case, involving vessels not taxed by the domiciliary state (page 170, *supra*), may be asserted some day by some state does not raise now a substantial federal question or preclude Ohio, as the domiciliary state and the state wherein the appellant has its principal place of business, and wherein the home port of the boats and barges is located, from taxing such boats and barges (*Northwest Airlines, Inc., v. Minnesota*, 322 U. S., 292, 88 L. Ed., 1283); especially in the absence of any showing in the present record that the boats and barges of the appellant were permanently located elsewhere, and that some other state having acquired lawful jurisdiction actually had taxed, in whole or in part, such boats and barges.

It is submitted that the claimed federal constitutional question presented in the appeal has been so definitely determined by the Supreme Court of the United States that no substantial question is presented by the appellant entitling the appellant to invoke the jurisdiction of the Supreme Court of the United States.

WHEREFORE, appellees respectfully move that the with  
 appeal be dismissed or that the judgment and decree of the  
 Supreme Court of Ohio be affirmed.

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